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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

EDWARD SPENCER,

Plaintiff and Appellant,

v.

STUART SHERMAN, as Warden, etc.,

Defendant and Respondent.

F077620

(Super. Ct. No. 18C0117)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kings County. Valerie R. Chrissakis, Judge.

Edward Spencer, in pro. per., for Plaintiff and Appellant.

No appearance for Defendant and Respondent.

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Appellant, Edward Spencer, an inmate at the California prison located in Corcoran, California, appeals from the trial court's summary denial of his petition for writ of mandate. Appellant's petition sought issuance of a writ commanding the warden

* Before Levy, Acting P.J., Franson, J. and Peña, J.

at said prison facility, respondent Stuart Sherman, to commence a thorough search for appellant's missing personal property. The trial court denied the petition for writ of mandate on the ground that appellant possessed an adequate remedy at law. We discern no abuse of discretion in the trial court's determination, and further observe that no error has been demonstrated by appellant. Accordingly, the order of the trial court is hereby affirmed.

FACTS AND PROCEDURAL HISTORY

On March 29, 2018, appellant filed his original petition for writ of mandate (the petition) in the trial court. According to the petition, during the relevant time appellant was an inmate confined at the "Substance Abuse Treatment Facility" at the Corcoran State Prison. It appears from the petition's allegations and the exhibits attached to the petition that, on or about August 19, 2017, appellant was moved from "Facility A" and re-housed to "Facility F" at the prison due to an altercation. Appellant's personal property items from his bunk and locker area were packed up and transferred to appellant's new location. A "Form 1083" property inventory form was apparently signed. However, after arriving at his new location, appellant discovered that a few of his personal property items were missing. Specifically, appellant alleged that one hot pot, one surge protector, one extension cord, and one "female to female connector" were not accounted for. The total value of the missing property items was estimated to be \$50.00. According to the petition, these property items were lost or disposed of by correctional officers due to their negligence and appellant sought to receive "compensation for the [loss] of his personal property or the equal value."

Prior to filing the petition in the trial court, appellant allegedly exhausted the required administrative review process and received administrative findings on all three necessary levels of internal administrative review. The records of the administrative review findings were attached as exhibit A to appellant's petition. The attached records reflect that inquiries were made and interviews were conducted by prison staff in the

course of evaluating appellant's property claim; however, there was no explicit statement therein indicating whether or not a search was made. Ultimately, the internal administrative review process resulted in a denial of appellant's claim that prison employees were responsible for his property loss, which finding was based on a purported lack of sufficient proof.

In the petition, appellant sought the issuance of a writ of mandate on the ground that respondent, the warden at Corcoran State Prison, had a mandatory duty to have a thorough search conducted for appellant's missing property items. In support of his contention that respondent owed such a mandatory duty, the petition referred to sections of the California Code of Regulations, including California Code of Regulations, title 15, section 3084.9, subdivision (f), which provides that when an inmate appeal is made concerning allegedly missing property, "[a]n attempt shall be made by staff to ... conduct a thorough search to locate the missing property." (Cal. Code Regs., tit. 15, § 3084.9, subd. (f)(3)(A).) The petition also made mention of California Code of Regulations, title 15, section 3193, subdivision (b), which states that "[t]he department shall accept liability for the loss or destruction of inmate personal property when it is established that such loss or destruction results from employee action[,]" and further states that if such liability is accepted, the remedy to the inmate would consist of providing donated replacement property or, if none is available, paying monetary compensation. Along with seeking a writ of mandate, the petition included a wholly duplicative claim for declaratory relief.

On April 10, 2018, the trial court entered its order summarily denying appellant's petition for a writ of mandate. The trial court's order stated as follows: "Petitioner seeks a writ of mandate from this court commanding the warden at California Substance Abuse and Treatment Facility in Corcoran to cause a diligent search be made for his personal property worth \$50 and to compensate petitioner for his loss, if it is established that the loss was due to employee action.... [¶] A writ of mandate will not be issued when there is a plain, speedy and adequate remedy in the ordinary [course] of law. [Citations.] The

alleged loss of property took place more than eight months ago. It is unlikely that petitioner's personal property could be found, and in any event compensation by replacement personal property or reimbursement of its value is an adequate remedy. [Citations.] Given the value of the personal property, plaintiff has an adequate remedy at law of filing a small claims action. [Citations.] [¶] The court finds that the writ fails to state a prima facie case for relief. A writ of mandate will only issue when there is not a plain, speedy and adequate remedy in the ordinary course of law. (Code of Civ. Proc., § 1086.) If a petition for a writ of mandate fails to state a prima facie case, a court may deny it out of hand. (*Dare v. Bd. of Medical Examiners* (1943) 21 Cal.2d 790, 797.) [¶] The petition for writ of mandate is summarily denied."

On April 26, 2018, appellant filed a motion for reconsideration. The trial court denied the motion for reconsideration on May 1, 2018.

On May 18, 2018, appellant filed the present appeal contending the trial court erred in summarily denying his petition for writ of mandate.

DISCUSSION

I. Standard of Review

Section 1086 of the Code of Civil Procedure provides that a writ of mandate is to be issued in cases "where there is not a plain, speedy, and adequate remedy, in the ordinary course of law." Although the statute does not expressly forbid the issuance of the writ if an adequate alternative remedy exists, "it has long been established as a general rule that the writ will not be issued if another such remedy was available to the petitioner." (*Phelan v. Superior Court* (1950) 35 Cal.2d 363, 366.) Generally speaking, the question whether an adequate alternative remedy exists is one of fact, depending on the circumstances of each particular case, and the determination of that question is largely within the sound discretion of the court. (*Flores v. Department of Corrections & Rehabilitation* (2014) 224 Cal.App.4th 199, 206.) We review that determination for

abuse of discretion. (*Sutco Construction Co. v. Modesto High School Dist.* (1989) 208 Cal.App.3d 1220, 1227.)

If a petition for writ of mandate fails to state a prima facie case or is procedurally defective, the court has discretion to summarily deny the petition out of hand. (*Gomez v. Superior Court* (2012) 54 Cal.4th 293, 301; *Dare v. Bd. of Medical Examiners*, *supra*, 21 Cal.2d at p. 797.) As noted, the trial court did precisely that here, disposing of the matter on the ground that plaintiff had an adequate remedy at law for damages in small claims court. We review such a summary denial on appeal for abuse of discretion. (*Dare v. Bd. of Medical Examiners*, *supra*, 21 Cal.2d at p. 797; *Kingston v. Dept. of Motor Vehicles* (1969) 271 Cal.App.2d 549, 552–553.)

As it appears the trial court intended no further action on the petition filed below, the trial court’s order summarily denying the petition is final and appealable. (See *Silva v. Superior Court* (1993) 14 Cal.App.4th 562, 573; *Kingston v. Dept. of Motor Vehicles*, *supra*, 271 Cal.App.2d at pp. 551–552.)

II. Appellant’s Burden on Appeal

The order or judgment appealed from is presumed correct, and therefore an appellant has the burden to affirmatively demonstrate reversible error. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) Prejudicial error must be affirmatively shown by an appellant through presentation of adequate legal argument and citation to the record. (*Yield Dynamics, Inc. v. TEA Systems Corp.* (2007) 154 Cal.App.4th 547, 556–557.)

III. Summary Denial of the Writ Petition Was Proper

A writ of mandate may be issued “to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station” (Code Civ. Proc., § 1085) in cases “where there is not a plain, speedy, and adequate remedy, in the ordinary course of law.” (Code Civ. Proc., § 1086.) “Generally, a writ of ordinary mandate will lie when (1) there is no plain, speedy and adequate alternative remedy,

(2) the public official has a legal and usually ministerial duty to perform and (3) the petitioner has a clear and beneficial right to performance.” (*Menefield v. Foreman* (2014) 231 Cal.App.4th 211, 216–217.) As noted above, Code of Civil Procedure section 1086 has been construed to establish a general rule that a writ of mandate will not be issued where another adequate remedy was available to the petitioner. (*Phelan v. Superior Court, supra*, 35 Cal.2d at p. 366.) The burden, of course, is on the party seeking a writ of mandate to show that he or she did not have such an alternative remedy. (*Ibid.*)

When an action at law or equity is available, it is presumed to be adequate and normally precludes a resort to mandamus. (8 Witkin, Cal. Procedure (5th ed. 2008) Extraordinary Writs, § 122, p. 1013.) For example, an action at law for damages was found to be an adequate legal remedy in a wage case, and therefore a writ of mandate was deemed improper. (*Tevis v. City & County of San Francisco* (1954) 43 Cal.2d 190, 198.) In *Flores v. Department of Corrections & Rehabilitation, supra*, 224 Cal.App.4th 199, an inmate’s petition for writ of mandate was not allowed to proceed because he had an adequate civil remedy for conversion in that case where he claimed a television was wrongfully confiscated from his cell. (*Id.* at pp. 202, 206.)

“[A] petition for writ of mandate may be dismissed if the plaintiff has an alternate ‘plain, speedy, and adequate remedy, in the ordinary course of law.’ [Citation.]” (*Villery v. Department of Corrections & Rehabilitation* (2016) 246 Cal.App.4th 407, 410.)

Where a petition for writ of mandate fails to set forth a prima facie case, a court may properly deny it out of hand. (*Dare v. Bd. of Medical Examiners, supra*, 21 Cal.2d at p. 797.) Here, the trial court exercised its discretion to summarily deny the petition for writ of mandate because it failed to state a prima facie case for relief. According to the trial court’s order, the petition failed to present a prima facie case because appellant had an adequate legal remedy for the \$50 in lost property—namely, a small claims court action pursuant to Code of Civil Procedure section 116.220. The trial court explained: “The alleged loss of property took place more than eight months ago [as of April 10, 2018]. It

is unlikely that petitioner's personal property could be found, and in any event compensation by replacement personal property or reimbursement of its value is an adequate remedy." On the latter point, the trial court's order referred to applicable regulations governing inmate property claims, which reflect that compensation for such losses by means of replacement property or reimbursement of value are recognized as adequate remedies if liability is found. (See Cal. Code Regs., tit. 15, § 3084.9, subd. (f)(3) & (4); Cal. Code Regs., tit. 15, § 3193, subd. (b).)

On the record before us, we conclude the trial court's determination that appellant had an adequate legal remedy—namely, a small claims action for damages—did not constitute an abuse of discretion. The Legislature created the small claims court to provide a forum to resolve minor civil disputes "expeditiously, inexpensively, and fairly." (Code Civ. Proc., § 116.120, subd. (b).) It is available to inmates incarcerated in California prisons, to resolve minor civil claims against the Department of Corrections and Rehabilitation or against an employee thereof for a claim arising out of the employee's duties, where the inmate has exhausted administrative remedies. (Code Civ. Proc., § 116.220, subs. (e) & (g).) Appellant has failed to demonstrate the inadequacy of the small claims court process as a method of effectively remedying his property losses through an award of damages, assuming he can prove his case. Appellant appears to mistakenly believe that if, as appellant alleges, the duty of the warden to perform a thorough search was purely ministerial, then it should not matter that appellant had an adequate alternative remedy. However, as discussed above, that is not the law. Additionally, as the trial court found, any search would appear to be futile at this point, due to the lengthy passage of time.

Because we conclude the trial court did not abuse its discretion in determining under all the circumstances that appellant had an adequate alternative legal remedy, the trial court's decision to summarily deny the petition was well within the bounds of its

proper discretion. To state our conclusion in other terms, no reversible error has been affirmatively shown, as was appellant's burden.

DISPOSITION

The trial court's order summarily denying the petition is affirmed.